DEPARTMENT OF STATE REVENUE

02-20120249.LOF

Letter of Findings: 02-20120249
Corporate Income Tax
For the Years 2007, 2008, and 2009

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ISSUES

I. Royalty Income – Corporate Income Tax.

Authority: IC § 6-3-1-20; IC § 6-3-1-21; IC § 6-3-2-1(b); IC § 6-3-2-2; IC § 6-3-2-2(a)(5); IC § 6-3-2-2(b); IC § 6-3-2-2.2; IC § 6-3-2-2.2(a); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Riverboat Development, Inc. v. Indiana Department of State Revenue, 881 N.E.2d 107 (Ind. Tax Ct. 2008); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); May Dep't Store v. Indiana Dep't of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001); Chief Industries v. Indiana Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000); Hunt Corp. v. Indiana Dep't of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999); Sherwin-Williams Co. v. Indiana Dep't. of State Revenue, 673 N.E.2d 849, (Ind. Tax Ct. 1996); Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158 (Ind. Tax Ct. 1995); Economy Oil Corp. v. Indiana Dep't of State Revenue, 321 N.E.2d 215 (1974); Dep't of Treasury of Indiana v. Dietzen's Estate, 21 N.E.2d 137 (1939); Fell v. West, 73 N.E. 719, 722 (Ind. App. 1905); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30.

Taxpayer argues that royalty income earned from its foreign subsidiaries should be excluded for purposes of calculating Taxpayer's Indiana Adjusted Gross Income Tax.

II. Hoosier Investment Credits – Corporate Income Tax.

Authority: IC § 6-3.1-26 et seq.

Taxpayer maintains that the Department of Revenue erred when it failed to include Taxpayer's Hoosier business investment tax credits in determining its proposed assessment.

STATEMENT OF FACTS

Taxpayer produces various consumer products. Taxpayer sells these products to customers both inside Indiana and outside Indiana. During the years at issue, Taxpayer operated an Indiana based facility.

The Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and corporate tax returns. The audit resulted in the assessment of additional corporate income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. This Letter of Findings results.

I. Royalty Income – Corporate Income Tax.

DISCUSSION

Starting in 2007, Taxpayer began excluding on its Indiana income tax return royalty income earned from foreign subsidiaries. According to the audit report, "The basis for this exclusion is that the transactions generating [Taxpayer's] royalties have no Indiana situs and are not derived from sources within the state." The audit disagreed with Taxpayer's analysis and found that the consumer products – which formed the basis for the royalty agreements – were developed in the regular course of the Taxpayer's business and that under the "transactional and functional tests," the intangible property generating the royalty income constituted an "integral" part of the Taxpayer's business and consisted of "apportionable business income."

Taxpayer explains its receipt of royalty income as follows:

> [R]oyalties received by [Taxpayer] are payments charged to [Taxpayer's] affiliates for the use of intangible personal property. Specifically, [Taxpayer] provides its affiliates with a non-exclusive right to use, among other things, patents, trademarks, trade names, and "know-how" that is owned by [Taxpayer]. These assets are managed by [Taxpayer] in New Jersey and New York. In exchange for providing its affiliates the right to use the aforementioned intangible assets, [Taxpayer] charges its affiliates a fee that is based on a percentage of the sales of such affiliates.

A. Taxpayer's Argument.

Taxpayer disagrees with the audit's decision to include the income explaining as follows:

> During the 2007 through 2009 tax years, [Taxpayer] deducted the royalty income received from its foreign subsidiaries on its duly filed Indiana Adjusted Gross Income Tax returns because such income was not subject to tax in Indiana based on existing Indiana tax law.

Taxpayer cites to IC § 6-3-2-2.2 as authority for its position that the royalty receipts are not Indiana source income.

> (a) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property are attributable to this state if the security or sale property is located in Indiana.

(b) Interest income and other receipts from consumer loans not secured by real or tangible personal property are attributable to this state if the loan is made to a resident of Indiana, whether at a place of business, by a traveling loan officer, by mail, by telephone, or by other electronic means.

(c) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property are attributable to this state if the proceeds of the loan are to be applied in Indiana. If it cannot be determined where the funds are to be applied, the income and receipts are attributable to the state in which the business applied for the loan. As used in this section, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.

(d) Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees are attributable to the state to which the card charges and fees are regularly billed.

(e) Receipts from the performance of fiduciary and other services are attributable to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one (1) state, the receipts from those benefits are attributable to this state on a pro rata basis according to the portion of the benefits consumed in Indiana.

(f) Receipts from the issuance of traveler's checks, money orders, or United States savings bonds are attributable to the state in which the traveler's checks, money orders, or bonds are purchased.

(g) Receipts in the form of dividends from investments are attributable to this state if the taxpayer's commercial domicile is in Indiana.

According to Taxpayer, IC § 6-3-2-2.2 strictly limits the specific types of intangible personal property attributable to Indiana as follows:

- Interest income and receipts from assets in the nature of loans or installment sales;
- Interest income and other receipts from consumer loans not secured by real or tangible personal property;
- Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property;
- Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees.
- Receipts from the performance of fiduciary and other services;
- Receipts from the issuance of travelers' checks, money orders, or United States savings bonds;
- Receipts in the form of investment dividends.

Taxpayer concludes that because IC § 6-3-2-2.2 does not reference royalty income, that Taxpayer was entitled to exclude the royalty income from its 2007, 2008, and 2009 returns. Taxpayer concludes that IC § 6-3-2-2.2 acts as a direct limitation on IC § 6-3-2-2 which states in part:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Taxpayer maintains that because IC § 6-3-2-2.2 does not specifically list "royalties," that specific form of income is not "attributable to this state" unless the intangible property is itself located in this state.

B. Burden of Proof.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana courts instruct that tax statutes, such as that relied upon by taxpayer, are interpreted in a matter consistent with advancing the taxing authority of the state. Dep't of Treasury of Indiana v. Dietzen's Estate, 215 Ind. 528, 532, 21 N.E.2d 137, 139 (1939).

"In construing tax statutes relating to assessment and collection, a liberal rule of construction must be indulged in order to secure their uniform implementation." Economy Oil Corp. v. Indiana Dep't of State Revenue, 162 Ind. App. 658, 664, 321 N.E.2d 215, 218 (1974). See also Fell v. West, 73 N.E. 719, 722 (Ind. App. 1905) ("The statutes of this state relating to the assessment and collection of taxes are liberally construed in favor of the taxing powers.")

C. Indiana's Corporate Income Tax.

Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b). In cases where a corporation derives business income from sources both within and without Indiana, the "adjusted gross income derived from sources within the state of Indiana is determined by an apportionment formula." Sherwin-Williams Co. v. Indiana Dep't. of State Revenue, 673 N.E.2d 849, 851 (Ind. Tax Ct. 1996). IC § 6-3-2-2(b).

D. Income "Attributable to Indiana."

In Hunt Corp. v. Indiana Dep't of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999), the Indiana Tax Court addressed the issue of whether the out-of-state income of Hunt Corporation and its subsidiaries was subject to Indiana adjusted gross income tax. The Indiana Tax Court stated that:

> [S]tates do not have to evaluate each income generating activity of the corporate enterprise in order to determine whether the income gained from that activity is properly taxable by the state. Instead, the state may look at all of the income gained by the corporate enterprise's business activity and determine the state's fair share of that total. Id. at 769.

The Indiana Tax Court in Hunt set out the first step in determining what income is attributed to Indiana:

> Indiana only levies adjusted gross income tax on corporate income attributable to Indiana. In order to determine what income is attributable to Indiana, it must be first determined whether the income sought to be attributed is business or non-business income. (Emphasis added). Id. at 771.

The first step is determining what income is subject to Indiana income tax is whether the income at issue consist of business or non-business income.

E. "Business" and "Nonbusiness" Income.

IC § 6-3-1-20 provides:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

IC § 6-3-1-21 defines "nonbusiness income" as follows:

> The term "nonbusiness income" means all income other than business income.

45 IAC 3.1-1-29 further explains:

> "Business Income" is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquisition, management, or disposition of the property are integral parts of the taxpayer's regular trade or business. Nonbusiness income means all income other than business income.
>
> The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business.

45 IAC 3.1-1-30 also illustrates:

> For purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression "trade or business" is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business and derive business therefrom depending upon but not limited to some or all of the following:
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> (1) The nature of the taxpayer's trade or business.
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> (2) The substantiality of the income derived from activities and transactions and the percentage that income is of the taxpayer's total income for a given tax period.
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> (3) The frequency, number, or continuity of the activities and transactions involved.
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> (4) The length of time the property producing income was owned by the taxpayer.
>
> (5) The taxpayer's purpose in acquiring and holding the property producing income.

The Indiana Tax Court, in May Dep't Store v. Indiana Dep't of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001), stated in relevant part that:

> Pursuant to Ind. Code 6-3-2-2, for the purpose of calculating a corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while nonbusiness income is allocated to Indiana or another state. A corporation's net income is its adjusted gross income, with certain adjustments.... [W]hether income is deemed business or nonbusiness income determines whether it is allocated to a specific state or whether it is apportioned between Indiana and other states wherein the taxpayer is conducting its trade or business. Id. at 656.

The Indiana Tax Court concluded that the statutory definition of "business income" was ambiguous and, thus, established two tests–a transactional test and a functional test–to determine whether a taxpayer's income is

considered "business income" pursuant to IC § 6-3-1-20. May, 749 N.E.2d at 661-63.

The court in May explained that:

> Under the transactional test, the controlling factor by which business income is identified is the nature of the particular transaction giving rise to the income. In deciding whether a specific transaction generated business income, pertinent considerations include: (1) the frequency and regularity of similar transactions; (2) the former practices of the business; and (3) the taxpayer's subsequent use of the income.
>
> ...
>
> Under the functional test, all gains from the disposition of a capital asset is considered business income if the asset disposed of was used by the taxpayer in its regular trade or business operations.... Under the functional test... the extraordinary nature or infrequency of the sale is irrelevant. ("If the property had an integral function in the taxpayer's unitary business, its income properly can be apportioned and taxed as business income, even though the transaction itself does not reflect the taxpayer's normal trade or business.") (Internal citations omitted.) Id. at 658-60.

The court in May further illustrated that:

> The functional test focuses on the property being disposed of by the taxpayer. By the very terms of the statute, the "acquisition, management, and disposition" of the property generating income must constitute an "integral" part of the taxpayer's regular trade or business operations. Thus, the property at issue must have been acquired, managed and divested or disposed of by the taxpayer. More importantly, this process (i.e., acquisition, management and disposition) must be integral to the taxpayer's regular trade or business operations. It is not enough that the property was used to generate business income for the taxpayer prior to its disposition. The disposition too must be an integral part of the taxpayer's regular trade or business operations.
>
> The term "integral" may be defined as "part or constituent component necessary or essential to complete the whole." (Internal citations omitted.) Id. at 664-65.

Ruling in favor of the petitioner, the court in May determined that the gains from the sale of the petitioner's subsidiary's assets did not qualify as business income under the transactional test. Id. at 664. The court further stated that the sale of the subsidiary's assets also did not qualify as business income under the functional test because the divestiture of the assets was neither a necessary nor an essential part of the petitioner's business operation–the planned transaction was ordered by a court and was for the benefit of a competitor. Id. at 665.

Taxpayer's royalty income is derived from foreign subsidiaries in which Taxpayer holds a controlling ownership interest. As stated in the audit report, Taxpayer has agreements with these subsidiaries by which Taxpayer shares "its own expertise and know-how, patents, trademarks and trade secrets...." In exchange for sharing its intellectual property with the subsidiaries, the subsidiaries pay Taxpayer royalties. Taxpayer is in the business of developing and selling consumer products. In the course of developing those products, Taxpayer developed or acquired valuable intellectual property. As such, the royalty income derived from licensing that intellectual property is derived from "intangible property" arises from "transactions and activity in the regular course of the taxpayer's trade or business...." IC § 6-3-1-20.

Nonetheless, Taxpayer argues that the "business" or "non-business" distinction is not relevant to the issue at hand. According to Taxpayer, the Indiana Tax Court has "held unequivocally that income from intangible personal property must have been classified as income derived from sources within the state of Indiana... prior to deciding whether the income was business or non-business income." The Department must disagree with Taxpayer's assertion because it flies in the face of the Tax Court's decision in Hunt.

F. Chief Industries.

Taxpayer cites to Chief Industries v. Indiana Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000) for the proposition that an out-of-state entity's income from intangible property is subject to allocation outside Indiana. In light of this proposition, Taxpayer maintains that the royalties are not taxable under Indiana law because the royalties are not "adjusted gross income derived from sources within Indiana" as found in IC § 6-3-2-2(a)(5). Taxpayer contends that royalty income is never deemed "business" or "non-business," but are always "sourced" to the state of taxpayer's domicile.

Taxpayer errs in its single-minded reliance on Chief Industries and its reading of IC § 6-3-2-2.2(a). Taxpayer's reliance on Chief Industries is mistaken because, as a preliminary matter it should be noted that Chief Industries deals with a prior 1986 version of IC § 6-3-2-2. Chief Industries held that the sale of an out-of-state corporation of stock in a related corporation lacked an Indiana tax situs, and thus could not be subjected to Indiana's adjusted gross income tax even though the corporation has a business situs in Indiana. The Tax Court concluded as such because the corporation's activities at its Indiana situs during the tax year were unrelated to the sales of the stock. The court concluded:

> As a matter of law, the Court finds that the capital gains earned by Chief from its sales of automotive common stock during the tax year had no tax situs in Indiana. Therefore, income from the sales is not "derived from sources within the state of Indiana" per section 6-3-2-2(a)(5). Lacking an Indiana source, the capital gains in question cannot be subjected to Indiana's adjusted gross income tax, as imposed by section 6-3-2-1(b). Chief Industries, 792 N.E.2d at 978-79.

In Chief Industries, the Indiana Tax Court interpreted statutory language – "having a situs in this state" – under IC § 6-3-2-2(a)(5); IC § 6-3-2-2.2 did not exist at that time. The statutory language – "having a situs in this state" – was removed from IC § 6-3-2-2(a)(5) by the Indiana General Assembly (the "General Assembly") in 1989 and was replaced with a conditional phrase – "if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter." As explained in footnote 10 of Chief Industries:

> The current version of section 6-3-2-2(a)(5) omits the phrase "having a situs in this state" and replaces it with "if the receipt from the intangible is attributable under section 2.2 of this chapter." INDIANA CODE ANN. § 6-3-2-2.2, effective January 1, 1990, discusses when income from, among other things, certain loans, sales contracts and dividend is attributable to Indiana.

The General Assembly added IC § 6-3-2-2.2 as a new provision to complement IC § 6-3-2-2 in determining whether income is "attributable to the state of Indiana." IC § 6-3-2-2.2 cannot be applied in isolation but rather must be applied in the context of IC § 6-3-2-2 (1989) which, in relevant part, states:

> (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:
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> (1) income from real or tangible personal property located in this state;
>
> (2) income from doing business in this state;
>
> (3) income from a trade or profession conducted in this state;
>
> (4) compensation for labor or services rendered within this state; and
>
> (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property, if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.
>
> In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provision of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. (Emphasis added).

In Hunt, the Indiana Tax Court stated that "in order to determine what income is attributable to Indiana, it must first be determined whether the income sought to be attributed is business or nonbusiness income." Hunt Corp., 709 N.E.2d at 771. In May, the Indiana Tax Court stated that, "[p]ursuant to [iC] § 6-3-2-2, for the purpose of calculating a corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while nonbusiness income is allocated to Indiana or another state." May Dep't Store, 749 N.E.2d 651 at 656.

Insofar as the royalty income itself, the Department's audit report states as follow:

> According to the Taxpayer... owns a controlling interest in numerous foreign subsidiaries throughout the world. Such foreign subsidiaries manufacture and market household and personal care products for the local markets of their respective countries. The [T]axpayer has long-standing agreements with its foreign subsidiaries whereby it has made its own expertise and know-how, patents, trademarks and trade secrets available to these companies. As a result of these agreements, income; in the form of royalties, is received by [Taxpayer] from the respective foreign subsidiaries. The brands that are marketed and sold abroad by [Taxpayer's] subsidiaries are exclusive to customers located outside the United States.

With the language change in the modifier of IC § 6-3-2-2(a)(5), came a significant change in the effect the modifier had on the subsection. IC § 6-3-2-2.2 contains no reference to eleven of the twelve categories listed in IC § 6-3-2-2(a)(5). If all twelve categories were subject to the requirement of being attributable to Indiana under IC § 6-3-2-2.2 – which only discusses one of the twelve categories – it would render eleven of the twelve items not applicable to Indiana circumstances. The Department cannot agree this was the legislature's intention. As the Tax Court explained in Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158, 1164 (Ind. Tax Ct. 1995), "The Court cannot presume the legislature to enact a nullity." To read the reference in IC § 6-3-2-2.2 as modifying all twelve items in IC § 6-3-2-2(a)(5) would render the eleven excluded items nullified. The Department finds this result untenable. In addition, it should be pointed out that the legislature modified IC § 6-3-2-2(a)(5) by enacting by P.L.347-1989(ss), Sec. 6, while IC § 6-3-2-2.2 was enacted by P.L.347-1989 (ss), Sec. 7. If the legislature intended to eliminate the eleven items in question from taxation under IC § 6-3-2-2(a)(5), it could have simply modified the subsection to incorporate the language of IC § 6-3-2-2.2 rather than go to the effort of leaving eleven meaningless categories and creating an entire separate statute to describe the sole remaining relevant category. That the legislature did not do this indicates that it did not intend to nullify the eleven categories, including royalties.

Therefore, since IC § 6-3-2-2(a)(5) was altered to include the eleven categories not related to IC § 6-3-2-2.2 in 1990, and since the eleven categories cannot be presumed to be nullified by the language of IC § 6-3-2-2.2, the decisions in Chief Industries and in Miles leads to the conclusion that taxpayer's reliance simply on the descriptive language in IC § 6-3-2-2.2 is misplaced. The legislature altered IC § 6-3-2-2(a)(5) so that the modifier cannot be logically applied to all twelve categories listed therein. The decision that the entire subsection is modified can only be applied to the pre-January 1, 1990 version of IC § 6-3-2-2(a)(5), and taxpayer's belief that IC§ 6-3-2-2.2 must

be satisfied for the eleven non-related categories is incorrect.

G. Riverboat Development.

Taxpayer also cites to the Tax Court's decision in Riverboat Development, Inc. v. Indiana Department of State Revenue, 881 N.E.2d 107 (Ind. Tax Ct. 2008). In that case, the court held that a nonresident S-corporation that owned a minority interest in a limited liability company doing business in Indiana did not have a withholding tax responsibility because the S-corporation's interest was an intangible interest with the income deemed a "dividend." As such, the court found that the "dividends" should be sourced to the petitioner's domiciliary state and not to Indiana pursuant to IC § 6-3-2-2.

According to Taxpayer, the court in RDI found that the membership interest in an Indiana LLC was intangible personal property under Indiana law, As Taxpayer explains, "RDI derived the income in question from intangible personal property which, under Indiana law, was only attributable to Indiana if RDI had its commercial domicile in Indiana. Consequently, the income was not Indiana-source income and was, therefore, not subject to [a] withholding requirement."

Even if the Department were to accept Taxpayer's interpretation of RDI, the Department must point out that the facts of RDI are distinguishable from the facts presented by Taxpayer in this administrative protest. For example, in RDI the court found that the LLC's members were unrelated and therefore the presumed limited partner (given that the LLC in RDI elected partnership treatment) was deemed to merely have an investment interest in the Indiana riverboat arguably transforming the riverboat's ordinary income into "dividends." In this instance Taxpayer has a controlling interest in foreign subsidiaries with whom it develops and markets products in the ordinary course of business and for which Taxpayer is paid royalties. The relationship between the parties in RDI is substantively different from the relationship between Taxpayer and its foreign subsidiaries. In addition, the source and nature of the income earned by Taxpayer is substantially different from the "dividend" income at issue in the RDI case.

Taxpayer's intellectual property was developed in the ordinary course of Taxpayer's business and the royalty income Taxpayer receives from allowing its subsidiaries to exploit that intellectual property constitutes business income under IC § 6-3-1-20 and should have been included in the calculation of Taxpayer's Indiana income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Hoosier Investment Credits – Corporate Income Tax.

DISCUSSION

Taxpayer maintains that the Department failed to include Taxpayer's Hoosier business investment tax credits in its proposed assessment. See IC § 6-3.1-26 et seq. According to Taxpayer, its "credits were properly earned and were properly recorded on its duly filed Indiana Adjusted Gross Income tax returns." Taxpayer admits that, "The Department [has] conceded that it made an error in excluding [Taxpayer's] credit because there was no substantive reason on the technical merits to exclude such credits." Despite the Department's admission, Taxpayer insists on "formally protest[ing] the Department's exclusion of [Taxpayer's] investment tax credits from its proposed assessment."

The Department is unable to address Taxpayer's "formal protest" because there is no issue on which Taxpayer and the Department disagree. According to Taxpayer, the Department erred in not acknowledging the credits but Taxpayer also admits that the Department now agrees that the credits were legitimately claimed.

FINDING

Taxpayer's protest is neither denied nor sustained.

SUMMARY

Taxpayer failed to establish that the royalty income earned from its foreign subsidiaries should have been excluded from its Indiana adjusted gross income in calculating Taxpayer's 2007, 2008, and 2009 corporate tax returns; any issue related to the Hoosier business investment tax credits is moot.

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